Supreme Court, U. S.
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No. 75-1878

IN THE

Supreme Court of the United States

October Term, 1975

ESTHER A. LANDGRAFF, Appellant

v.

A. G. WAGNER, M.D.; SAMARITAN HEALTH SERVICES, a corporation; GOOD SAMARITAN HOSPITAL, a business association; and FRANK R. PRECHENY, M.D., Appellees

On Appeal From
The Supreme Court of Arizona

OPPOSITION TO MOTION TO DISMISS

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I

THE JUDGMENT OF THE COURT OF APPEALS OF THE STATE OF ARIZONA IS THE LAW OF THE CASE AND REQUIRES REVIEW AT THIS TIME.

The concept of finality has a penumbral area. North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156 (1973). A pragmatic approach is required. Brown Shoe Co. v. U.S., 370 U.S. 294 (1962).

The constitutional issues in this case have been adjudged by the highest

court in the state and the decision of the Court of Appeals of the State of Arizona is the law of the case. The issues will become decisive of, and affect by stare decisis, constitutionally protected rights of other citizens of the United States. It must be reviewed at this stage or cannot be reviewed at all. Rio Grande Western Railway Co. v. Stringham, 239 U.S. 44 (1915).

The remand of this case was solely for the purpose of carrying out limited rights remaining in the plaintiff after the constitutional declaration by the Court of Appeals. The constitutionality of the Arizona medical malpractice statute of limitations is a matter for which probable jurisdiction should be noted at this time, in the interest of expedient administration of justice.

II

THE DECISION OF THE ARIZONA COURT OF APPEALS IS SOLELY A MATTER OF CONSTITUTIONAL LAW.

Appellees suggest that this case was somehow decided by the Court of Appeals on adequate non-federal grounds. The only issue before the Court of Appeals was the constitutional question; the Court of Appeals considered no other issues.

III

SUBSTANTIAL FEDERAL QUESTIONS OF FIRST IMPRESSION AND CONTEMPORARY PUBLIC IMPORTANCE ARE PRESENTED.

There is no issue concerning the constitutionality of a statute of limitations under provisions of the fundamental law of the state. The issue, rather, is: The constitutionality under the U. S. Constitution of the statute of limitations designed solely for the protection of a professional class which deprives an injured person of the right of action for injuries before such person has discovered injury or the fact that a wrong has been committed.

The facts of this case are misstated by appellees on page 23 of their motion. Appellant's claim was held to be barred at the time she discovered she had been injured. She was deprived of her right of action before she knew such right existed because her injury was caused by the neglect of a doctor and hospital. In Arizona, if she had been injured by the tortious act of any other class, her right of action would not have been barred. (A.R.S. §12-542). Nielson v.

Arizona Title Ins. & Trust Co., 15 Ariz. App. 29, 485 P.2d 853 (1971); Leech v. Bralliar, 275 F.Supp. 897 (D.C. 1967); Mayer v. Good Samaritan Hospital, 14 Ariz. App. 248, 482 P.2d 497; Tom Reed Gold Mines Co. v. United Eastern Mining Co., 39 Ariz. 533, 8 P.2d 449. Such a legislative scheme should not go unnoticed for the reasons stated in appellant's Jurisdictional Statement.

Respectfully submitted,

Norman Herring
Attorney for Appellant

Of Counsel:
Robert Stephan, Jr.

August, 1976

CERTIFICATE OF SERVICE

I, NORMAN HERRING, an attorney for Appellant, Esther A. Landgraff, certify that I deposited in the United States mail, postage prepaid, an envelope containing forty copies of Appellant's Opposition to Motion to Dismiss, addressed to the Supreme Court of the United States, Washington, D.C. and mailed copies of this Opposition this 19th day of August, 1976, to the following parties:

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